

Supreme Court, U.S.
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No. 85-1321

IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1985

RUDY J. RAMIREZ,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA

BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

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SUMMARY OF ARGUMENT

The California law in issue is not retrospective because it applies only to conduct occurring after its enactment. The analysis employed by the California Supreme Court in finding no ex post facto law is consistent with this Court's previous decisions on the subject.

ARGUMENT

THE CALIFORNIA SUPREME COURT OPINION IS NOT IN CONFLICT WITH ANY DECISION OF THIS COURT

The California Supreme Court in this case found no unconstitutional ex post facto law where a statute increasing credit forfeiture for prison misconduct was applied to a prisoner who committed his misconduct after the statute became effective. Petitioner claimed a violation of ex post facto principles because when he committed the underlying crime and was sentenced, less credits could be forfeited for the same prison misconduct. He argued that he served a longer sentence when more credits were forfeited under the new statute. (In re Ramirez (1983) 39 Cal. 3d. 981.)

The California Supreme Court's opinion correctly analyzed the ex post

facto claim and is entirely consistent with prior decisions of this Court. This Court has not expressly decided whether a new law regulating future prison conduct violates ex post facto principles because it may incidentally increase a previously incarcerated prisoner's minimum release date. However, it is clear from prior decisions that this Court would unequivocally reach the same conclusion as the California Supreme Court that such a new law is not ex post facto law.

In Weaver v. Graham (1981) 450 U.S. 24, this Court noted at p. 30 that "[c]ritical to relief under the Ex Post Facto Clause is not an individual's right to less punishment, but the lack of fair notice and governmental restraint when the legislature increases punishment beyond

what was prescribed when the crime was consummated."

Obviously, when a new law is passed which increases credit forfeiture for prison misconduct committed after its effective date, a prisoner is on notice that if he commits misconduct after the effective date, he will suffer more credit loss than before. Under the reasoning of Weaver, such a law is not ex post facto since there is fair notice and the new law has no direct application to the underlying sentence. This is exactly what the California Supreme Court concluded in this case, and what the Court of Appeals for the District of Columbia Circuit concluded in Warren v. United States Parole Commission (D.C. Cir. 1981) 659 F.2d 183, at pp. 194-195, cert. denied,

455 U.S. 950, in an analogous factual situation.

This Court also stated in Weaver that to be ex post facto, a law must apply to events occurring before its enactment. (Weaver v. Graham, supra, at p. 29.) The new law involved in this case does not apply to events occurring prior to its enactment. It relates to future prison misconduct and future penalties for such future misconduct. Petitioner's automatically earned "gain time" remains unchanged, and his ability to continue earning at least the same amount of "gain time" remains unchanged. The maximum and minimum possible release dates remain unchanged and would even be sooner in some cases. These facts were noted by the California Supreme Court in support of its conclusion that the new law simply "does

not punish beyond what was prescribed when the crime was consummated . . . " (In re Ramirez, supra.)

In short, petitioner's punishment for his underlying crime remained exactly the same before and after the new law. The new law was entirely aimed at controlling future prison misconduct. It incidentally could affect the actual time served, but only by extending the minimum release date because of future credit forfeiture for future misconduct, and only if petitioner affirmatively engaged in prison misconduct after the effective date of the new law. The new law is so far from being an ex post facto law that in reality, there is simply no material ex post facto issue in this case for this Court to resolve.

Despite the clarity of this analysis, respondent recognizes that there appears to be some confusion among the circuits as to whether laws which increase the penalty for future misconduct and, thus, result in extending a prisoner's confinement period, are ex post facto laws. On the one hand, there is the persuasive analysis of the District of Columbia circuit as expressed in Warren v. United States Parole Commission, supra, finding no ex post facto violation. On the other hand, there is the cursory opinion of the Fifth Circuit in Beebe v. Phelps (5th Cir. 1981) 650 F.2d 774, finding to be ex post facto a new law which allowed forfeiture of 180 days of previously earned "good time" credits following a parole violation. In Beebe,

substantial reliance was placed upon Greenfield v. Scafati (D.Mass. 1967) 277 F.Supp. 644, a case summarily affirmed by this Court at 390 U.S. 713. In Greenfield, the district court found to be ex post facto a new law which disallowed conduct credits for a six-month period following reincarceration for parole violation.

Leaving aside the factual distinctions of Beebe and Greenfield, neither case specifically discussed whether the new law was retrospective, that is, directed at events occurring before its enactment, as required by Weaver v. Graham, supra, at p. 29. Instead, both cases assumed that fact, apparently because the new law incidentally affected the total length of

a prisoner's sentence by reducing credits following parole violation. However, the new laws in Beebe and Greenfield can be characterized as being directed at future events only, and not any past event. This is so because the penalty (loss of credits) attached only if the prisoner violated parole after the enactment of the new law. Thus, in both cases the prisoner had fair notice that if he violated parole after enactment of the new law, he would be subjected to a greater loss of credits. The new laws in Beebe and Greenfield were not retrospective because they were directed at future events (future good behavior by parolees), not past events. Had the courts in Beebe and Greenfield, examined the new laws to see if they were retrospective, clearly both would have

found no post facto law. (See Portley v. Grossman (1980) 444 U.S. 1311, 1312-1313, chambers opinion by Justice Rehnquist upon an application for a stay, which found no ex post facto violation in using new parole guidelines to set longer term of reincarceration following parole revocation: "The terms of the sentence have in no way been altered. Appellant cannot be held in confinement beyond the term imposed by the judge, and at the time of his sentence he knew that parole violation would put him at risk of serving the balance of his sentence in federal custody. The [guidelines], therefore, neither deprive applicant of any pre-existing right nor enhance the punishment imposed.")

The California statute in this case is not retrospective because it

relates only to prison misconduct occurring after its enactment. There is no significant ex post facto issue requiring this Court's resolution, and the petition for certiorari should be denied.

CONCLUSION

For all of the foregoing reasons, respondent respectfully requests that the petition for certiorari be denied.

DATED: April 10, 1985.

Respectfully submitted,

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